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## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 701, 736, 737, 738, and 750**

**RIN 1029-AC65**

**Docket ID: OSM-2012-0003**

### **Cost Recovery for Permit Processing, Administration, and Enforcement**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to revise its Federal and Indian Lands Program regulations for the purposes of adjusting the existing permit fees and assessing new fees to recover the actual costs for permit review and administration and permit enforcement activities provided to the coal industry. These fees are authorized under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the Independent Offices Appropriations Act of 1952 (IOAA). The fees would be used to offset OSM's costs for processing various permit applications and related actions, administering those permits over their lifecycle, and performing required inspections. The proposed fees would be applicable to permits for coal mining on lands under OSM's direct regulatory jurisdiction. The proposed fees would also be applicable to coal mining on Indian lands where OSM is the regulatory authority. The primary purpose of this rulemaking is to charge the surface coal mining

and reclamation operations that benefit from obtaining and operating under surface coal mining and reclamation permits for OSM's costs to review, administer, and enforce those permits instead of passing those costs on to the general public.

**DATES:** *Electronic or written comments:* OSM will accept written comments on the proposed rule on or before [Insert date 60 days after the date of publication in the FEDERAL REGISTER]. Comments on the proposed rule's information collection should be submitted by [Insert date 30 days after the date of publication in the FEDERAL REGISTER].

*Public hearing:* If you wish to testify at a public hearing, you must submit a request before 4:30 p.m., Eastern Time, on [Insert date 21 days after the date of publication in the FEDERAL REGISTER]. OSM will hold a public hearing only if there is sufficient interest. Hearing arrangements, dates and times, if any, will be announced in a subsequent **Federal Register** notice.

## **ADDRESSES:**

*Public comments:* You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule has been assigned Docket ID: OSM-2012-0003. Please follow the on-line instructions for submitting comments.
- *Mail/Hand-Delivery/Courier:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252 SIB, 1951 Constitution Avenue, N.W., Washington, DC 20240. Please include the Docket ID: OSM-2012-0003.

You may view the public comments submitted on this rulemaking at <http://www.regulations.gov> . When searching for comments, please use the Docket ID: OSM-2012-0003.

*Public hearing:* You may submit a request for a public hearing on the proposed rule to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. If you require reasonable accommodation to attend a public hearing, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Information Collection:* If you are commenting on the information collection aspects of this proposed rule, please submit your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) , or via facsimile to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Michael F. Kuhns, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW, Room 222, Washington, DC 20240. Telephone: 202-208-2860.

**SUPPLEMENTARY INFORMATION:**

- I. Background Information
- II. Discussion of the Proposed Rule
  - A. General
  - B. Processing Fee

## C. Annual Fixed Fee

### III. Public Comment Procedures and Information

### IV. Procedural Matters and Required Determinations

#### **I. Background Information**

##### *Why is OSM Revising the Regulations?*

In an effort to promote fiscal responsibility, OSM (also referred to as “we” and “our”) has undertaken a comprehensive review of the costs it takes to run its programs. As part of this assessment, we identified the need to update our regulations related to the permit application and other fees that we collect from the coal industry to reflect our costs more accurately.

We last promulgated regulations related to fee collections over 20 years ago, in 1990, 55 FR 29536 (July 19, 1990). Pursuant to those regulations, we collect only approximately 2 percent of the costs that it takes us to perform permit reviews, and we do not collect any fees, other than civil penalties, for our permit administration and enforcement costs.

This rulemaking would allow us to better implement SMCRA and other policies and requirements with regard to fees and cost recovery for services rendered to regulated industries. Since our last rulemaking, the Office of Management and Budget (OMB) has revised Circular No. A-25 relating to “fees assessed for Government services and for sale or use of Government goods or resources.” 58 FR 38144 (adopted 1993; revised July 15, 1993), available at [http://www.whitehouse.gov/omb/circulars\\_a025](http://www.whitehouse.gov/omb/circulars_a025). In addition,

under the Department of the Interior's (Interior's) implementing policy, OSM is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. See 330 Departmental Manual 1.3A and Department of the Interior Accounting Handbook at 6-4, available at <http://www.doi.gov/pfm/handbooks/accounting.html>.

In addition, implementation of this proposed rule would shift a significant portion of the financial costs for reviewing, administering, and enforcing permits from the general public to the identifiable beneficiary—the permit applicant or existing permittee or operator.<sup>1</sup> It would also reduce an indirect taxpayer-funded subsidy to applicants, permittees, and operators of surface coal mining and reclamation operations within our regulatory jurisdiction because these services are currently fully funded through annual discretionary appropriations.

#### *What Laws Authorize OSM to Collect Fees?*

We have specific authority to collect fees in jurisdictions where we are the regulatory authority—i.e., States and Tribes that have not obtained approval to run their own regulatory program. Section 507(a) of SMCRA (30 U.S.C. 1257) states that—

Each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal program under the provisions of this Act shall be accompanied by a fee as determined by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such

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<sup>1</sup> The operator of a surface coal mining and reclamation operation governed by the initial program regulations is sometimes referred to in this preamble as the “permittee” and the holder of a “permit,” despite the lack of the type of permit required under the permanent regulatory program. We would intend for these operators to be subject to the new cost recovery requirements.

permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.

This provision applies to all States in which we are the regulatory authority: currently Tennessee and Washington. Likewise, pursuant to section 710(d) of SMCRA (30 U.S.C. 1300(d)), which refers specifically to section 507, we have authority to collect fees on surface coal mining operations on Indian lands for which no Tribal regulatory program has been approved pursuant to section 710(j) of SMCRA: currently, surface coal mining and reclamation operations are located on lands of the Crow Tribe, the Hopi Tribe, the Ute Mountain Ute Tribe, and the Navajo Nation.

Additional authority for cost recovery is provided by the Independent Offices Appropriations Act of 1952 (IOAA), as amended, 31 U.S.C. 9701, which provides generally for cost recovery by Federal agencies. The IOAA expresses the intent that services provided by agencies should be “self-sustaining to the extent possible,” 31 U.S.C. 9701(a), and authorizes agency heads to “prescribe regulations establishing the charge for a service or thing of value provided by the agency.” 31 U.S.C. 9701(b).

#### *What Policy Documents Govern Cost Recovery or Collecting Fees?*

Executive Branch policy on cost recovery is set out in OMB Circular No. A-25. It establishes Federal policy regarding user charges under the IOAA. It also “provides guidance to agencies regarding their assessment of user charges under other statutes.” In general, section 6 of the Circular provides: “A user charge . . . will be assessed against each identifiable recipient for special benefits derived from Federal activities

beyond those received by the general public.” This charge is designed “to recover the full cost to the Federal Government for providing the special benefit, or the market price.” Interior and its bureaus have adopted OMB’s policy as set forth in section 6 of Circular A-25. See Department of the Interior Accounting Handbook at 6.4.2.

*How did we solicit public participation for the development of the rule?*

As part of our comprehensive review, we identified 89 specific stakeholders who might be affected by this rule or might have an interest in this rule. The stakeholders include coal mining operators, environmental groups, government agencies, and municipalities located in the States of Tennessee, Washington, and on Indian lands where OSM is the regulatory authority. On March 2, 2012, we asked for their feedback by sending them an outreach letter that summarized some concepts that we were considering regarding the restructuring of our permit fees. We received 13 responses from this effort. Nine responses came from the coal industry, one was from a Tribal government, one was from an environmental organization, and two were from private citizens. In general, the coal mining industry objected to any provisions that would increase their mining costs. The environmental organization and citizens supported the rule, and the Tribal government raised issues concerning costs and applicability. We reviewed and considered these responses as we developed this proposed rule.

In addition, OSM considered comments we received through consultation and coordination with the impacted Indian Tribal governments. This consultation is described in greater detail below in the discussion of Executive Order 13175 under **IV.**

**Procedural Matters.**

### *How Did OSM Determine Which of Its Services Should Be Recovered Through Fees?*

Section 507(a) of SMRCA provides the authority to charge fees equal to or less than the actual or anticipated costs for reviewing, administering, and enforcing surface coal mining and reclamation permits. Given this broad authority, we reviewed the specific activities and work that we perform with regard to (1) reviewing, (2) administering, and (3) enforcing permits. Included within our permit review responsibilities are activities related to the processing of new permit applications, requests to modify or revise existing permits, the required mid-term review of the permit, permit renewals, and the transfer, assignment, or sale of rights to an existing permit. We also recognize that there could be irregular, non-routine costs associated with applications or other actions that OSM might require in 30 CFR Chapter VII now or in the future. Administration of an existing permit includes permit file maintenance, the review and analysis of various periodic monitoring and inspection reports, as well as verification that bond release requirements are met. Our inspections of mine sites are included within our permit enforcement activities.

Once we identified our review, administrative, and enforcement services and activities, we analyzed the extent to which the activity conveyed a benefit to an identifiable recipient, such as a permit applicant or existing permit holder, or to the general public. In keeping with Federal cost recovery policy, we are only proposing fees for those services and activities that we have identified as conveying a benefit to an identifiable recipient.

### *How Did OSM Analyze Its Costs for the Services It Provides to Identifiable Recipients?*

In October 2009, we began a review of costs associated with administering our responsibilities for the Federal Program States (currently Washington and Tennessee) and the Indian Lands Programs. To facilitate this review and to acquire the best information available, we enhanced the level of detail captured in our accounting system by adding the name of the State or Tribe and the permit number to many of the previously established cost codes. This additional information allowed us to more accurately capture the costs for each of the activities and services we provided. The new coding structure began to be phased-in during April 2010.

After gathering this information, we then performed a cost analysis of various activities and services using the detailed cost data and associated accumulated programmatic output data. For example, we examined our costs for activities that occur infrequently in connection with a given mining operation, such as the review of a permit application, as well as for more routine and recurring activities, such as those associated with administering and enforcing existing permits (regular inspections would be one example). We then analyzed the resulting costs, associated cost drivers (i.e., factors that affect the cost of a task, such as the number of hours it takes to complete an inspection), and the differing costs for the administration of the Federal and Indian Land Programs among the regions where OSM is the regulatory authority.

After reviewing this data, we considered various approaches for recovering these costs through fees as authorized by SMCRA and the IOAA. We considered many options,

including the recovery of actual costs, average costs, and standard costs through a case-by-case or set fee rate.

#### *How Does the Existing Rule Operate?*

Our existing rule is located at 30 CFR 736.25(d) for Federal Program States and 30 CFR 750.25(d) for Indian lands. Under these regulations, we only charge a fee on new permit applications, and we do not collect a fee for the majority of other permit application and review services that we provide to applicants, permittees, and operators. This existing fee for permit applications is based on a fixed fee schedule, which, in sum, assesses nationwide fees at significant stages of the review process for new permit applications. Specifically, under the existing regulations, we charge a flat \$250 for our administrative completeness review, \$1,350 for our technical review, and \$2,000 for our issuance of decisional documents. In addition, we currently assess a nationwide declining graduated permit application fee based on the acreage of the disturbed area within the proposed permit boundaries:

First 1,000 acres	\$ 13.50/acre
Second 1,000 acres	\$ 6.00/acre
Third 1,000 acres	\$ 4.00/acre
Additional acres	\$ 3.00/acre

As previously stated, the existing fee neither recovers the actual costs for our permit review nor addresses the recovery of our ongoing permit administration or enforcement services.

### **III. Discussion of the Proposed Rule**

#### **A. General**

##### *How Are the Proposed Fees Different from the Existing Fees?*

The proposed rule would overhaul the way we calculate fees for permitting activities. In addition to restructuring the fees we charge for new permit applications, the proposed rule would include fees for a broader range of permitting activities and services. The fee for permitting activities would not use a fee schedule but instead would be based on actual costs that we would calculate on a case-by-case basis.

The proposed rule also would establish an annual fixed fee to recover a portion of our yearly permit administration and enforcement services. The annual fixed fee for each permit would be determined by four factors—the geographic region; type of permit operation (i.e., whether a permit is for a mine site or support facility); mine site acreage; and the required frequency of inspections as determined by the permit's phase of bond release or by special situations. Special situations consist of operations with atypical inspection requirements, such as surface coal mining and reclamation operations governed by the initial program regulations or permits that are inactive as defined in 30 CFR 842.11(c)(2)(iii), which includes sites that have achieved Phase II bond release or that are in temporary cessation of mining operations. The annual fixed fee would account for the number of mandated annual inspections, including the time for review, travel, inspection and reporting, as well as indirect costs. As proposed, these fees are designed so that OSM would not exceed its actual costs for providing review and

administration, and engaging in enforcement activities and services. Fees would be reviewed and adjusted on a periodic basis.

*What Kind of Fees Would This Rule Establish?*

Our proposed rule would eliminate the current fixed fee schedule and replace it with (1) a *processing fee* that is determined on a case-by-case basis for the review and approval of all permit application services and (2) an *annual fixed fee*, which is designed to recover the costs of OSM's recurring permit administration and permit inspection services. These fees would cover our activities and services in Federal Program States and on Indian lands where OSM is the regulatory authority; however, these fees would also be applicable to any lands for which OSM becomes the regulatory authority pursuant to an action under Part 733 of our regulations (i.e., when OSM takes over all or part of a State program).

Our proposed processing fee rule would be located in a new Part 737. Under the rule, in Federal Program States and on Indian lands where OSM is the regulatory authority, the processing fee would be paid by (1) any applicant for a permit to conduct surface coal mining and reclamation operations, a permit renewal or revision, a transfer, assignment or sale of rights of an existing permit, or any new application or action that OSM might require to be submitted in 30 CFR Chapter VII as a result of possible future rulemaking, and (2) permittees and operators that undergo the required mid-term permit review. In addition, these fees would be paid on applications for coal exploration permits under 30 CFR 772.12. Fees would not be required for notices of intention to explore as described in 30 CFR 772.11 because these notices typically require much

less processing time than coal exploration permits. For services other than notices of intention to explore, we would calculate the processing fee for services on a case-by-case basis by determining our actual costs to process the action.

Our proposed annual fixed fee would be located in a new Part 738. That fee would be paid by any permittee or operator of a surface or underground coal mining and reclamation operation. The annual fixed fee for each surface coal mining and reclamation operation would be determined by four factors—the geographic region; the type of permit operation (e.g., whether the site is a mine or a support facility); the mine site acreage; and the required frequency of inspection—whether the permit is in any phase of bond release or whether any special situations exist (as with initial program sites or permits that are inactive). The fee would account for the number of mandated inspections conducted annually, the variations in inspection hours and travel in locations east and west of the 100<sup>th</sup> meridian west longitude, and indirect costs.<sup>2</sup> Support facilities include preparation plants, ancillary facilities (such as haul roads), refuse and/or impoundment sites, loading facilities and/or tipples, and stockpiles. We also recognize that we still administer some surface coal mining and reclamation operations under the initial program regulations, and that these surface coal mining and reclamation operations have different inspection requirements; therefore, we are providing a separate category of annual fixed fees for those permits. OSM estimates 10 active surface coal mining and reclamation operations fall into this category.

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<sup>2</sup> SMCRA relies on the 100<sup>th</sup> meridian west longitudinal line to represent the boundary between the moist eastern United States and the arid western United States. See, e.g., SMCRA, 30 U.S.C. 1260(b)(5) & 1277(a).

*What Happens if OSM Substitutes Direct Federal Enforcement or Withdraws Approval of All or Part of a State Program?*

Pursuant to 30 CFR 733.12, if the Director determines that (1) the State has failed to effectively implement, administer, maintain, or enforce all or part of its approved State program, and (2) the State has not demonstrated its capability and intent to administer the State program, the Director can :

- a. Substitute direct federal enforcement for all or a portion of a State program pursuant to § 733.12(g); or
- b. Withdraw approval of all or part of a State program and implement a replacement Federal program pursuant to § 733.12(h)

In the event that OSM does substitute direct federal enforcement or withdraws approval of all or a portion of a State program, all applicants, operators, and permittees in that State would be required to pay fees covering our expenses for processing applications and performing other actions. In other words, the applicants, operators, and permittees would be responsible for the same costs as any proposed or actual surface coal mining and reclamation operation located within any other Federal Program State or on Indian lands where OSM is the regulatory authority. The collection of this proposed fee would cover the cost of services provided by OSM associated with assuming the responsibilities of all or a portion of a State program.

Because OSM can take over part of a State program under § 733.12, OSM's new role might consist only of performing a few activities that would be subject to cost recovery under the proposed regulation. For instance, OSM might assume only the bond

calculation function of a State program. In that case, we would calculate the amount of the bond at the required times in the life of your permit and recover from the applicant or operator the cost of doing so. Under such a scenario, the State regulatory authority would continue to perform all the other permitting activities. In that case, we would charge you processing fees to cover our actual costs of performing the bond calculation review. We would only charge you an annual fixed fee if we were to assume the inspection and enforcement activity for a particular regulatory authority.

#### *How Did OSM Determine the Proposed Fee Structures?*

First, we examined SMCRA section 507(a) and other relevant statutes and guidance documents to determine the parameters of our authority to collect fees. Our overall goals are to establish fees that would be fair and equitable, would not exceed our actual costs, and would minimize the administrative burden associated with billing and collecting the fees.

Second, in order to develop the proposed fee structures, we reviewed the three permit-related components for which the applicant, permittee, or operator receives a benefit or service unique to the operation (i.e., permit review, permit administration, and permit enforcement), and classified them either as activities and services with variable costs based on the circumstances, or activities and services that are similar and routine. In particular, we determined that permit application processing and other similar review activities often occur infrequently in connection with any given operation and that the time required for reviewing these activities varies. For example, although every new

surface coal mining and reclamation operation requires a permit, the review times and associated processing costs for applications for a new permit vary widely depending on factors such as the size of the mine, potential environmental impacts, complexity of the proposed action, mining method, site topography and hydrology, and the completeness and accuracy of the application itself. Other than mid-term permit reviews, these activities are usually triggered by the applicant or permit holder. Mid-term reviews and permit revisions and renewals are similarly very site specific and vary significantly in the amount of time it takes to process them. In addition, permit revision applications can be submitted during either the active mining phase or the reclamation phase, which affects our processing costs. In contrast, some activities and services, such as performing the review and analysis of various monitoring reports, file maintenance and conducting inspections of the permitted mine site, are regular, routine activities and services. Our work relative to these activities and services largely correlates to the number of required inspections we conduct each year, the geographic region, the type of operation we are inspecting, and the permitted acreage.

Based on this analysis, we are proposing an actual cost, case-by-case processing fee for the activities that occur only occasionally and that vary significantly in the amount of review required and a recurring annual fixed fee for activities that are routine and have similar costs. We believe that this approach would recover the greatest percentage of our review, administrative, and enforcement costs while minimizing our administrative burden. This approach also ensures that the fees do not exceed the actual cost of our work, which is expressly prohibited by SMCRA.

*What OSM Costs Would Be Recovered by the Proposed Processing Fee?*

We have calculated the proposed fee rates to include the sum of our direct and indirect costs related to the activities covered in proposed § 736.25. Direct costs are comprised of the time spent by the employee or employees who process the permit and other expenses such as travel and supplies necessary for carrying out each step of an application. The hourly cost of the employees' time is based on the employees' salaries and benefits. The cost of travel includes travel associated with field work and site visits for technical and programmatic review of applications. Direct costs would vary by permit because of differences in the technical complexity and skill requirements of personnel reviewing permits.

Indirect costs include all expenses that are common to all regulation and technology activities and are assessed at the same rate in all cases. These costs include centrally paid items such as telecommunications, rent, utilities, security, as well as bureau support functions such as human resource services, finance, and management. We used the general guidance contained on OMB Circular A-25 for determining the activities to include in our indirect cost rate.

*Will There Be Penalties if the Processing or Annual Fixed Fee is Not Paid on Time?*

Yes. Under proposed §§ 737.18 and 738.14, if the applicant, permittee, or operator does not pay the fees by the due date specified in parts 737 and 738, respectively, we would use our authority under the Debt Collection Act, as amended, (31 U.S.C. 3717) to

charge interest, penalties, and administrative costs related to our fee collection activities.

In addition, if the annual fixed fee is not paid by the dates specified in parts 737 and 738, we might also exercise our enforcement authority under parts 843, 845, and 846, which would generally result in the issuance of a notice of violation under § 843.12. If the processing fee is not paid by the date specified in § 737.14, as discussed below, we would suspend processing the application or other action until we receive the fee unless doing so would delay corrective action at the site.

If you are delinquent in paying your annual fixed fee or processing fee, under the proposed rule, we might enter this violation into the Applicant/Violator System (AVS). As reflected in the proposed addition of paragraph (vi) to the definition of “violation” contained in 30 CFR 701.5, a violation in the context of permit application information or permit eligibility requirements of sections 507 and 510(c) of the Act could include the failure to pay the required processing or annual fixed fee. Such a violation in the AVS might cause the violator and associated parties to be ineligible for future permit actions, including being ineligible to receive AML reclamation contracts, under 30 CFR 773.12 and coordinating state regulatory counterparts. Section 510(c) of SMCRA precludes permitting authorities from issuing a permit to an applicant that owns or controls a mining operation with a current violation.

*Could the Proposed OSM Consolidation with the Bureau of Land Management and the Office of Natural Resources Revenue Affect this Rule?*

The Department of the Interior is in the beginning phases of consolidating certain fee collection functions between OSM and the Office of Natural Resources Revenue (ONRR). See Secretary of the Interior Ken Salazar's Secretarial Order No. 3320, signed on April 13, 2012. We do not expect the consolidation efforts between OSM, ONRR, and the Bureau of Land Management to affect the substance of this rulemaking; however, it is possible that, at some point, certain procedural sections of the rule (i.e., the provisions governing where the fees contained in this rule would need to be sent) might be revised to reflect the ongoing consolidation efforts.

**B. Processing Fee**

*For What Services or Actions Would OSM Assess a Processing Fee?*

Under the proposed rule at § 736.25(a), OSM would charge a processing fee for the following activities in a Federal Program State or on Indian lands where OSM is the regulatory authority:

1. A new permit application to conduct surface coal mining and reclamation operations, including coal exploration permits (but excluding notices of intention to explore);
2. A revision to an existing permit, whether requested by the permittee or ordered by OSM;
3. A request to transfer, assign or sell rights to an existing permit;
4. A mid-term review;

5. A request to renew a permit; and
6. With the exception of bond release applications, any other action on which OSM may assess fees as specified in 30 CFR Chapter VII.

The processing fee would be charged for the application review costs that we incur, even if a permit application is ultimately denied.

We are not proposing to charge a processing fee for bond release applications because a substantial amount of the review time for these applications consists of inspection of the onsite mine permit conditions and many of these inspection hours overlap with the required inspections that are part of the annual fixed fee.

We foresee the possibility that future rulemaking could require the submission of other applications or actions for us to process. If we do propose such future rulemaking that requires us to process new actions, we would discuss in the preamble whether it should be subject to a processing fee.

*Would the Applicant Know the Amount of Processing Fee at the Time the Application is Submitted?*

As described in proposed § 737.11(a), we would provide the applicant with a written estimate of the proposed fee and an estimated processing time before we begin to process the application or other permitting action.

*Would the Permittee or Operator Know the Amount of Processing Fee at the Time the Mid-term Permit Review is Started?*

Under proposed § 737.11, we would notify you, the permittee or operator, of the estimated costs of your mid-term permit review when we are required to begin that review.

*How Would OSM Estimate Your Processing Fee?*

First, OSM would estimate the direct costs of processing your application or other action based on our known range of costs for reviewing various permitting activities. To produce this estimate, we would perform a cursory review of your application or other action to determine its scope and complexity when we receive your application or when your mid-term review is required. Next, we would determine the type of staff needed to review and act upon your application or other action. Using our most recent data for processing similar applications or other actions, we would estimate the number of hours that we expect it would take us to complete the review. We would break down this estimate by discipline (i.e., hydrologist, engineer, reclamation specialist, etc.) and assign corresponding hourly rate costs. We would also include any estimated travel costs that we would incur in visiting the permit application site to verify the site conditions or meet with others about the permit application or mid-term review.

The cost estimate would not include any costs associated with our attending any interagency pre-application meetings because we view these meetings as beneficial and time-saving to everybody, including the general public, who is involved in the

process. Similarly, we would not include the costs of estimating the processing fee in developing our estimate of your processing fee.

As described above, a bureau-wide flat indirect cost rate was calculated based upon our total direct costs for regulatory activities. After we determine the estimated direct costs to process your application or conduct a mid-term review, we would use this figure and apply the indirect cost rate to arrive at your estimated processing fee. We would use this estimate for billing purposes. As we move forward in reviewing your application or conducting our mid-term review, we would re-calculate our costs and periodically provide you with an updated estimate.

#### *What Indirect Costs are Included in the Processing Fee?*

We used the general guidance contained on OMB Circular A-25 for determining the indirect costs that are applied to our direct costs. Indirect costs include centrally paid items such as telecommunications, rent, utilities, security, as well as bureau support functions such as human resource services, finance, and management. OSM used a cost estimation methodology based on activities identified in its Work Breakdown Structure (WBS) System. WBS provides reasonable managerial accounts for costs. We used Fiscal Year 2011 as the baseline year for this rate. We applied the indirect costs identified above to total regulation and technology costs for the fiscal year yielding a rate of 21 percent. We intend to periodically adjust our indirect cost rate fees to reflect changes in our indirect costs. We would publish this revised rate in the Federal Register.

*Would the Proposed Processing Fee Change How Environmental Impact Statements (EISs) and Environmental Assessments (EAs) are Handled by OSM?*

We would continue our general practice of hiring a consultant to prepare an EIS when one is required for your permit application, and the consultant would continue to bill you, the applicant, directly. However, the costs for OSM's staff time associated with this activity would be included in our new processing fee. When OSM prepares an EA for your permit activity, which might also include the preparation of a finding of no significant impact, we would bill you for our actual costs to produce these documents.

*How Would Processing Fees be Billed?*

Upon receiving the estimate, pursuant to proposed § 737.13, the applicant, permittee, or operator would have the option to submit the estimated fee in total or to submit a partial payment if the processing time is estimated to be more than six months. Applicants, permittees, and operators paying the full amount would have to do so within 30 days of the printed date of our estimate under proposed § 737.14. Proposed § 737.14 also details when payments would be due from applicants, permittees, and operators choosing the partial payment method. Generally, under this proposed provision, the first installment would be due within 30 days of the estimate and each additional installment would be billed every six months thereafter.

As detailed in proposed § 737.13(b), the amount of the partial payment would be calculated by dividing the total estimated fee amount by the number of six-month

periods estimated for our processing. Under proposed § 737.16, we would generally revise the estimates every six months and incorporate any adjustments into the next six-month billing. Thus, if a payment turns out to be more or less than our processing costs for that same period, the adjustment would be reflected in a subsequent billing cycle.

Except for mid-term reviews, processing would not normally begin on your permit application or other action until we receive your first installment. Regardless of whether the fee is paid in a lump sum or installments, proposed § 737.14(c) makes clear that the entire fee would have to be paid before we would issue the final decision document unless the fee is for a permit revision that is necessary to correct a violation. According to proposed § 737.18(a), we might begin processing any permit revisions that are required to correct a violation before we receive payment. This exception was added because we do not want to delay corrective action by the permittees.

*What Happens if the Processing Fee Estimate is More or Less Than Actual Processing Costs?*

We intend for your final processing fee to reflect our actual costs of performing the review and preparing a decision document regarding the permit application (or other action listed in proposed § 736.25(a)). You would not be expected to pay more than our actual costs. To make sure that you do not pay more than the costs that we actually incur to process your application or other action, we would record our actual costs in our financial system. Our financial system would allow us to capture unique cost accounts

that would be established for each unique permitting action. These cost accounts would reflect our direct labor and non-labor costs (if applicable).

We would reconcile our estimated costs and actual costs pursuant to proposed § 737.16. If you are paying by installments, we would adjust a subsequent installment to make up the difference between the estimated and actual costs. Once the final amount has been paid and the decision document issued, if our estimate was greater than our actual processing costs, we propose to refund the excess amount to you, without interest. If our estimate was less than our actual processing costs, we would bill you for the difference; however, we would have to receive your payment before the issuance of the final decision document.

Instead of issuing automatic refunds of any amount in excess of our processing costs, we considered retaining the overage and applying it to future annual fixed fee or other processing fee costs. However, current guidance from the Department of the Treasury requires us to refund all excess monies to which OSM has no claim. For that reason, and in the interest of administrative efficiency, we decided to propose the automatic refund.

*Would These New Regulations Increase the Time Required to Obtain or Revise a Permit or Other Action?*

We are sensitive to concerns about the creation of regulations that might extend the time required to obtain or revise a permit or review another action, and we have drafted

this proposed rule to include only one new process—the cost estimate and billing process. We anticipate the amount of time required for this process would be minimal. OSM staff is already required to track the time they spend on specific categories of work; thus, we have a good basis for providing cost estimates for different activities and services. Therefore, we do not believe this regulation would materially increase the amount of time it would take us to review a permit application or other action, assuming the processing fees are paid in a timely manner. Moreover, we believe that this proposed regulation might encourage the submission of more complete and accurate applications packages, which could have the effect of decreasing the amount of time we need for review and the associated cost.

*How Would the Processing Fee be Applied to Services and Actions that OSM is Already Reviewing?*

At this time OSM has not determined how best to apply the processing fee to applications pending review at the time the proposed rule is finalized. We do not want this rulemaking effort to encourage applicants to submit incomplete or hastily prepared applications before the effective date of the final rule in order to avoid the new processing fees.

Although not specifically reflected in the proposed rule text, we are considering adding language to the final rule that would waive the proposed processing fee for applications for (1) all activities other than new surface coal mining and reclamation operations, permit renewals, and significant permit revisions that are received by OSM prior to the

effective date of the final rule; and (2) new surface coal mining and reclamation operations, permit renewals, and significant permit revisions that are received by OSM prior to the effective date of the final rule and determined by OSM to be both administratively and technically complete at the time of submission. Applications for all of these activities received after the effective date of this rule, those applications that do not meet the conditions above, and mid-term reviews that are required after the effective date would be subject to the new processing fee.

We are considering making this distinction because permit applications for new surface coal mining and reclamation operations typically require substantially more hours of review than all other types of permit applications, and it is important for the applications for those activities to be technically complete before we can meaningfully review the application. If we adopt this approach, applicants that satisfy the criteria for waiver of the new processing fees for these activities would still be required to pay some fees, such as an application fee based on the existing regulations, and the annual fixed fee. These applicants would also be required to pay processing fees under the new regulations for any future applications.

We would like your comments about this proposed approach or other ideas about how the revised fee structure should apply to permit applications already submitted.

### **C. Annual Fixed Fee**

*For What Services Would OSM Assess an Annual Fixed Fee?*

As previously noted, under § 736.27 and Part 738, we propose to recover our costs for permit administration and permit enforcement through an annual fixed fee, which would be assessed yearly. When certain services are performed repeatedly and as expected, a fixed fee is a good mechanism for recovering those costs and is administratively efficient. When we assessed our work, we noted that inspections are one type of routine service that we provide because the minimum number and types of inspections for assessing compliance of permits are set by regulation. Based on an analysis of the records of previous inspections, we were able to ascertain that certain factors, such as the type of inspections (full or partial), the geographic area, and size of the mine site or support facility, all contribute to the length of time per inspection. In other words, we noticed that mines of similar size and similar geography require approximately the same amount of time to complete a particular type of inspection. Because of the predictable nature of inspections, we believe a fixed fee is appropriate. This approach is consistent with section 507(a) of SMCRA, which specifically authorizes us to collect fees for administrative and enforcement costs and allows these costs to be paid over the term of the permit. We anticipate the collection of this fee would help us recover a portion of our activity and service costs related to permit maintenance, permit administration, and permit inspection.

#### *How Would I Know How Much My Annual Fixed Fee Would Be?*

We have determined that a one-size-fits-all annual fee is impracticable because our costs to administer and enforce permits can vary due to a number of factors—primarily related to geography, the permit acreage for mining operations or permit type for

nonmining operations (i.e., a support facility), the phase of bond release, if any; and special situations (such as operations governed by the initial program regulations and permits that are inactive). Thus, in § 738.11(b), we are proposing a table that sets different rates for surface coal mining and reclamation operations based on those factors. Operators should be able to identify their annual fixed fee by consulting this table.

We believe that this table fairly represents our fixed costs for administering and enforcing these permits because our recurring inspection and other maintenance activity costs are directly related to statutory and regulatory requirements that specify criteria for inspection frequency. For instance, we are required to complete no fewer than four (4) complete and eight (8) partial inspections each year on permits that have not achieved Phase II bond release. However, once a permit achieves Phase II bond release, the frequency of mandated inspections is reduced to four (4) complete inspections annually. The lower annual fixed fee rate for permits that have achieved Phase II bond release acknowledges this reduction in our administrative and enforcement costs. Likewise, for permits that are inactive or operating under the initial program regulations, and which have different inspection requirements, the table identifies a separate rate. We would not collect annual fixed fees on any permit sites that have been fully reclaimed as evidenced by Phase III bond release certification.

*How did OSM Determine the Annual Fixed Fee Rates Proposed in the Table in § 738.11(b)?*

We collected data on the direct historical costs for permit administration and permit enforcement activities and services that are captured in our accounting system related to permit maintenance, permit administration, and permit inspection. We then assigned these costs to the appropriate inspections in Tennessee, Washington State, and on Indian lands for sites that were not in a forfeited or abandoned status. As discussed above, we also treat sites that are inactive, are governed by our initial program regulations, or have achieved Phase II bond release differently by applying lower fees to reflect a reduction in costs from a reduced number of inspections.

In setting the annual fixed fees, we excluded costs associated with conducting citizen complaint inspections because we recognize these inspections vary widely in frequency and scope and do not lend themselves to an annual fixed fee. We also excluded costs associated with taking enforcement actions, such as the issuance of a cessation order or a notice of violation, because these are not recurring actions but instead occur only in connection with specific permits where a problem is encountered.

We initially considered basing the annual fixed fee solely on the amount of bonded or disturbed acreage, but rejected that method after a thorough analysis of our costs and of some of the outreach comments we received. To ensure that we would not recover more than our actual costs on any individual permit, we are using a conservative annual fixed fee based on the geographic region, acreage, and type of permitted operation (i.e., mining operation or support facility), and stage of bond release. A permit that achieves Phase II bond release would be eligible for the reduced annual fee rate once it has been

in this new phase status for an entire billing cycle. Similarly, a permit that achieves Phase III bond release would no longer have to pay an annual fee. We would notify the Division of Financial Management when a permit becomes inactive or when the appropriate bond release occurs. An adjustment to the annual fixed fee or a refund would be made as described in proposed § 738.15.

After determining the base figure for our direct costs, we then applied a 21 percent indirect rate to that base figure in order to arrive at the final annual fixed fee rates proposed in § 738.11(b). A discussion of the indirect cost rate can be found in the section above regarding the processing fee.

*What Cost Methodology Did OSM Use to Determine Its Direct Costs for the Annual Fixed Fees?*

The proposed rates for the annual fixed fees are based upon the costs that OSM incurs annually for activities directly associated with ongoing permit administration and enforcement. We considered several methods for establishing a proposed fee to recoup our annual costs to administer and enforce permits for surface coal mining and reclamation operations. First, we considered proposing a flat annual fixed fee for all permits, regardless of the characteristics of the surface coal mining and reclamation operation (such as location, size, or phase of bond release); however, we determined that such an approach would be inappropriate given that costs vary substantially across permitted sites. So, we decided to set fees based on several criteria because we recognize that our administrative and enforcement expenses vary as we regulate

permitted sites ranging from large surface mines spanning tens of thousands of acres down to small permitted units, such as an ancillary haul road facilitating nearby mining operations. We also considered proposing a simple acreage fee but determined that, given the wide array of permitted sites across geographical areas, such a fee would not be equitable. Eventually, we settled on the proposed method, which explicitly recognizes differences in surface coal mining and reclamation operations based on site attributes, size, and reclamation status of permitted sites.

We then analyzed data to link the site categories to costs. OSM maintains an agency-wide database to record, among other things, the inspection and enforcement time for conducting federal inspections in States and Tribes. Upon review of this data, we determined that a good indicator of our costs to administer and enforce the permits was the time expended by OSM inspectors to service permits annually. We were able to pull information from our database to review our inspectors' time for each activity necessary to implement the Federal and Indian lands program in non-primacy States and Tribes. We specifically looked at the time it takes for each inspection to: (1) review the permit; (2) travel to and from the site; (3) inspect the site; and (4) write the report. Our inspectors use standardized forms to record mining status and reclamation phases, acres of the permitted site, permit type (permanent program or interim site), type of mine (surface or underground), facility type (prep plant, haul road, refuse, loading facility, or stockpiles), and inspection type (complete or partial).

We also sorted all permits in Federal Program States and on Indian lands where OSM is the regulatory authority into six physical categories (described below) and four inspection groups (permits without Phase II bond release, permits with Phase II bond release, inactive permits, and initial program operations) based on the minimum required inspection frequency. The physical categories include support facilities and five categories based on ranges of permitted acreage—mines less than 100 acres, mines 100 acres but less than 1,000 acres, mines 1,000 acres but less than 10,000 acres, mines 10,000 acres but less than 20,000 acres, and mines 20,000 acres or greater. The range of site categories reflects the required hours per inspection which varies substantially between mine types due to the size and complexity of mines in each geographical area. For example, partial inspections require nearly twice as much time in Tennessee as similar sized mine sites west of the 100<sup>th</sup> meridian west longitude. Mine sites above 10,000 acres do not exist in areas east of the 100<sup>th</sup> meridian, while some mines exceed 60,000 acres in areas west of the 100<sup>th</sup> meridian west longitude. Another physical category is the location of the permit or operation, specifically if it is located east or west of the 100<sup>th</sup> meridian west longitude. The underground mine acreages we considered consist only of surface acreage, rather than the affected subsurface “shadow area,” which is often larger than the surface footprint. All of the existent active underground mines presently fall into the category of mines less than 100 acres. Inspection frequency groups include permits requiring 12 inspections, permits requiring 4 complete inspections (for permits achieving Phase II bond release and for inactive permits), and those requiring only 2 complete inspections (initial program sites).

For each physical category, we calculated inspection time for both complete and partial inspections using a statistical mean for inspection times for both complete and partial inspections. We recognize that inspection times on a site might vary for a given year due to the various circumstances of a mining operation or reclamation process, so we took a three-year average (2009-2011) of hours per inspection to better represent the time requirements for inspections performed in each category.

Averages were statistically different across the physical categories. For example, complete inspections in Tennessee for the three ascending acreage categories required 5 hours, 11 hours, and 47 hours respectively, while partial inspections for the same acreage categories required 4 hours, 6 hours, and 10 hours respectively. We considered creating subcategories within each broad physical category, but deemed such a division unnecessary because there was a lack of significant difference in the statistics. For example, the estimated time required to service permits with permitted acreages falling between 800 and 1,000 acres was not statistically higher than permits with acreages falling between 600 and 800 acres. Thus, we determined that five broad acreage categories were appropriate based on statistical differences in total hours expended for inspecting the entirety of each permitted site.

Next, using OSM's inspection and enforcement database to determine the time required to administer and enforce each of the categories, we established annual cost estimates for servicing each of these categories of permits. SMCRA requires a minimum number

of annual inspections, and we used this minimum number to calculate the total hours needed to maintain a permit annually, even though OSM would sometimes perform more than the minimum number of inspections on an individual permit. As an example, our data revealed that at a minimum, for an active mine in Tennessee with 600 permitted acres (category 2), we require 92 inspection hours (11 hours for each complete inspection multiplied by 4 complete inspections annually plus 6 hours for each partial inspection multiplied by 8 partial inspections annually). When the minimum number of inspections drops once a mine has obtained Phase II bond release, the number of inspection hours required would drop to 44 hours (11 hours multiplied by 4 complete inspections annually). We decided not to include costs associated with time expended due to enforcement actions, such as follow-up inspections for assessing civil penalties and reviewing notices of violation. These costs are unanticipated and specific to an individual permit, and therefore are not appropriate for inclusion in the annual fixed fee, which is designed to cover our predictable and recurring costs.

Once we determined the number of required inspection hours, we could multiply that figure by the standard hourly rate for an inspector's salary and benefits and average annual travel costs to perform the required inspections. This sum gives us the direct costs for administration and enforcement for the various categories reflected in proposed § 738.11(b). We then applied an indirect cost of 21 percent for all geographical areas to determine the annual permit fee. We applied the same nationwide indirect fee rate as previously described in the processing fee section of the

**SUPPLEMENTARY INFORMATION**, Discussion of The Proposed Rule. Thus, the table in § 738.11(b) includes both our direct and indirect costs.

*How Would Annual Fixed Fees be Billed?*

The annual fixed fee would be billed in advance for our permit administration and enforcement costs. For new permits issued after the effective date of this rule, we propose to send you a prorated bill for the period beginning when the permit is issued through the end of the current fiscal year (September 30) as described in § 738.11(a). For permits already issued prior to the effective date of this rule, we propose to send you a prorated bill for the period beginning when the rule becomes effective through the end of the current fiscal year (September 30) as described in § 738.11(a). Because initial program sites, inactive permits, and permits that have achieved Phase 2 bond release require only two complete annual inspections, their prorated amount would be determined by the timing of our inspections rather than the remaining months in the billing year. We would then annually bill you each year thereafter at the start of each new fiscal year (October 1). However, we recognize that there are many options for billing that might be more or less convenient for our permittees, such as billing at the beginning of the calendar year. Alternatively, we could bill on a quarterly basis (similar to the current AML fee) or a semi-annual basis. We specifically invite comments as regarding the billing procedures for the annual fixed fee.

*What Happens if My Permit Becomes Eligible for a Reduced Annual Fixed Fee Rate During the Year?*

You would have to pay the annual fixed fee in advance for the next 12 months.

However, if your operation achieves a phase of bond release or becomes inactive during the year, you might be eligible for a reduced annual fixed fee. If the event that makes your permit eligible for a reduced fee occurs within the first 6 months of the billing year, we would refund a prorated portion of your annual fixed fee, without interest, as proposed in § 738.15.

#### *Would the Annual Fixed Fees be Updated or Revised?*

Yes. Under proposed § 738.11(c), we intend to periodically adjust our annual fixed fee to reflect changes in our direct costs and/or indirect rate. We would publish all such revised fees in the Federal Register.

### **III. Public Comment Procedures and Information**

#### *How do I submit comments on the proposed rule?*

##### *General guidance*

We will review and consider all comments that are timely received, but the most helpful comments and the ones most likely to influence the final rule are those that include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Federal laws or regulations, technical literature or other relevant publications, or that involve personal experience. Your comments should reference a specific portion of the proposed rule or preamble, be confined to issues pertinent to the proposed rule, explain the reason for any recommended change or objection, and include supporting data when appropriate.

Please include the Docket ID "OSM-2012-0003" at the beginning of all written comments that are mailed or hand carried to OSM. We will log all comments that are received prior to the close of the comment period into the docket for this rulemaking; however, we cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking or considered in the development of a final rule.

Procedures for sending comments to the Office of Management and Budget are described in the Paperwork Reduction Act section of the Procedural Matters.

#### *Public availability of comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire

comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### *Public hearing and teleconferences*

We will hold a public hearing on the proposed rule only if there is sufficient interest. We will announce the time, date, and address for any hearing in the Federal Register at least 7 days before the hearing. If there is only limited interest in a public hearing, we may hold a teleconference instead and invite those who had expressed an interest in presenting oral comments. We will place a summary of the public hearing or teleconference, if held, in the docket for this rulemaking.

If you wish to testify at a hearing please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, either orally or in writing, by 4:30 p.m., Eastern Time, on **[Insert date 21 days after the date of publication in the FEDERAL REGISTER]**. If there is only limited interest in speaking at a hearing by that date, we will not hold a hearing and may, instead, offer to hold a teleconference.

#### **IV. Procedural Matters**

##### **Regulatory Planning and Review (Executive Orders 12866 and 13563)**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

The revisions to the existing fee schedule are intended to offset OSM's costs for processing various permit applications and related actions, administering those permits over their lifecycle as well as the costs associated with providing enforcement of the permits. The proposed fees would be applicable to permits for mining on lands where regulatory jurisdiction has not been delegated to the States. The proposed fees would also be applicable to mining on Indian lands where OSM is the regulatory authority. The primary purpose of this rulemaking is to charge the costs to review, administer, and

enforce surface coal mining and reclamation permits to those who benefit from obtaining and operating under the permit, rather than the general public.

The proposed revisions would result in an increase in the costs placed on coal operators mining in Federal Program States (Tennessee and Washington) and on Indian lands where OSM is the regulatory authority. Within the Federal and Indian lands programs, we currently issue approximately 200 permitting actions per year with less than 5% currently subject to a fee. We also have inspection and permit administration responsibilities for over 300 permits that include over 120,000 bonded acres. For all of these activities, the total amount we currently collect averages \$40,000 per year under the existing fee structure. The fees under the proposed rule would recover a large portion of the annual \$3.1 million for permitting and inspection costs currently being incurred by OSM and paid using appropriated (discretionary) funds to finance these activities.

### **Regulatory Flexibility Act**

There are approximately 1086 surface coal mining and reclamation operations in the United States. This rulemaking would only affect the surface coal mining and reclamation operations located in Tennessee, Washington and on Indian lands, which we estimate to be 41 companies—25 active surface coal mining operations and 16 reclamation operations.

The Small Business Administration uses the North American Industry Classification System Codes to establish size standards for small businesses in the coal mining industry. The size standard established for coal mining is 500 employees or less for each business concern and associated affiliates. The Mine Safety and Health Administration indicates that small coal-mining firms comprise over 96% of the 1086 coal-mining firms in the United States. For purposes of this proposed rule, we are estimating that all 41 surface coal mining and reclamation operations impacted by this rule would qualify as small business entities. The actual dollar effect upon each operator would be highly variable and depend upon the number of permitting actions that each operator requests, the geographic region, the size and type of the mining operation, and the phase of bond release. Although this number is variable, we have included rough estimates of the minimum and maximum processing fees under the **Paperwork Reduction Act** section below. In addition, the annual fixed fees range from roughly \$700 for an initial program site with less than 100 acres in the East to roughly \$96,000 for a surface coal mining operation with more than 20,000 acres and without Phase II Bond Release in the West. See proposed 30 CFR 738.11(b).

The Department of the Interior certifies that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This conclusion is based on the small number of surface coal mining and reclamation operators affected by the proposed rule—approximately 4 percent of small surface coal mining and reclamation operations in the United States—and the graduated fee schedule based on mine size and facilities.

### **Small Business Regulatory Enforcement Fairness Act**

Based on the cost data previously discussed, this rule is not considered a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Will not have an annual effect on the economy of \$100 million.
2. Will not cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions.
3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

### **Unfunded Mandates Reform Act**

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

### **Paperwork Reduction Act**

This rule contains collections of information that require approval by OMB under 44 U.S.C. 3501 et seq. In accordance with 44 U.S.C. 3507(d), we have submitted the information collection and recordkeeping requirements of 30 CFR Part 737 to the Office

of Management and Budget (OMB) for review and approval. We are planning to establish a new collection of information for the following activity:

**Title:** 30 CFR Part 737 – Processing Fees for Operations on Land Where OSM is the Regulatory Authority

**OMB Control Number:** 1029-xxxx.

**Summary:** In an effort to promote fiscal responsibility, OSM has identified the need to update its regulations related to the permit application and related fees that we collect from the coal industry to more accurately reflect our costs. We have revised our Federal and Indian Lands Program regulations for the purpose of adjusting the existing permit fees and to assess fees to recover up to our actual costs for permit administration activities provided to the coal industry. The primary purpose of this regulation is to charge those who benefit from obtaining, and operating under, a surface coal mining and reclamation permit for our costs to review, administer, and enforce permits instead of passing those costs on to the general public. These fees are authorized under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the Independent Offices Appropriations Act of 1952. The fees relating to the processing of various categories of permit applications are considered a burden on the public under the Paperwork Reduction Act and need OMB approval accordingly.

**Bureau Form Number:** None.

**Frequency of Collection:** Once, on occasion.

**Respondent's Obligation:** Required to obtain or retain a benefit.

**Description of Respondents:** Coal mine permittees.

**Total Annual Responses:** 177 permittee responses.

**Total Annual Burden Hours:** 0 burden hours.

**Total Annual Non-Wage Burden Costs:** \$1,142,069.

Non-wage burden costs are the processing fees which OSM will assess on a case-by-case basis for various types of permitting activities. The fees below are based upon a national weighted-average for hours required for each geographical area to review applications and, therefore, should not be construed to represent the cost of an individual permit activity. Costs include the labor costs for Federal salaries and benefits, and an indirect charge of 21% of direct costs.

(1) New Permits – 4 applications x \$45,423 in average Federal wage costs to review the application + 21% indirect costs = \$219,848 (rounded) for permit applicant fees. We anticipate minimum Federal wage costs of \$19,318 (including indirect costs) and a maximum of \$151,602 (including indirect costs) per new permit application.

(2) Permit Renewals – 9 applications x \$6,585 in average Federal wage costs to review the application + 21% indirect costs = \$71,712 (rounded) for permit renewals. We anticipate minimum Federal wage costs of \$3,883 (including indirect costs) and a maximum of \$74,673 (including indirect costs) per permit renewal application.

(3) Mid-Term Reviews – 13 reviews x \$7,228 in average Federal wage costs to review the application + 21% indirect costs = \$113,698 (rounded) for mid-term reviews. We

anticipate minimum Federal wage costs of \$3,883 (including indirect costs) and a maximum of \$74,673 (including indirect costs) per permit renewal application.

(4) Transfer, Sale, or Assignment of Permit Rights – 6 applications x \$1,216 in average Federal wage costs to review the application + 21% indirect costs = \$8,826 (rounded) for applications for the transfer, sale, or assignment of permit rights. We anticipate minimum Federal wage costs of \$552 (including indirect costs) and a maximum of \$9,446 (including indirect costs) per transfer, sale, or assignment of permit rights application.

(5) Exploration Permits - 2 applications x \$2,821 in average Federal wage costs to review the application + 21% indirect costs = \$6,826 (rounded) for exploration permits. We anticipate minimum Federal wage costs of \$109 (including indirect costs) and a maximum of \$12,824 (including indirect costs) per exploration permit application.

(6) Significant Permit Revisions - 5 applications x \$19,532 in average Federal wage costs to review the application + 21% indirect costs = \$118,165 (rounded) for significant revisions to permits. We anticipate minimum Federal wage costs of \$670 (including indirect costs) and a maximum of \$74,824 (including indirect costs) per significant permit revision application.

(7) Non-significant Permit Revisions - 151 applications x \$3,302 in average Federal wage costs to review the application + 21% indirect costs = \$602,994 (rounded) for non-significant revisions to permits. We anticipate minimum Federal wage costs of \$331 (including indirect costs) and a maximum of \$22,263 (including indirect costs) per non-significant permit revision application.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for SMCRA regulatory authorities to implement their responsibilities, including whether the information will have practical utility.

(b) The accuracy of our estimate of the burden of the proposed collections of information.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected.

(d) Ways to minimize the burden of collection on the respondents.

Under the Paperwork Reduction Act, we must obtain OMB approval of all information and recordkeeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. OSM is seeking a new OMB control number for the collection in proposed Part 737, which will appear in §737.10 once assigned. To obtain a copy of our information collection clearance request, contact John A. Trelease at 202-208-2783 or by email at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov). You may also review the information collection request at <http://www.reginfo.gov/public/do/PRAMain>. Follow the website to the Department of the Interior's collections currently under review by OMB, where you can find the collection being created for this proposed rulemaking.

By law, OMB must respond to us within 60 days of publication of this proposed rule, but it may respond as soon as 30 days after publication. Therefore, to ensure consideration by OMB, you must send comments regarding these burden estimates or any other

aspect of these information collection and recordkeeping requirements by [Insert date 30 days from date of publication in the FEDERAL REGISTER] to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov), or via facsimile to (202) 395-5806. Also, send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, N.W., Room 203 SIB, Washington, DC 20240, electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov), or by facsimile to (202) 219-3276. You may still send comments on the proposed rulemaking to us until 4:30 p.m., Eastern Time, on [Insert date 35 days from the date of publication in the FEDERAL REGISTER].

### **National Environmental Policy Act**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by the categorical exclusion listed in the Department of the Interior regulations at 43 CFR 46.210(i). That categorical exclusion covers policies, directives, regulations and guidelines that are of an administrative, financial, legal, technical, or procedural nature. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

### **Executive Order 12988 - Civil Justice Reform**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

### **Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy**

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not expected to have a significant adverse effect on the supply, distribution, or use of energy. It will have limited effect in the states of Tennessee and Washington and on those mining on Indian lands. Further, the rule does not prohibit surface coal mining operations; therefore, a Statement of Energy Effects is not required.

### **Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments**

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the proposed revisions would not have substantial direct effects on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. In November of 2011, OSM held separate meetings with representatives of the Crow Tribe, Hopi Tribe

and the Navajo Nation to discuss the proposed rule and obtain their comments. Each of these Indian Tribes/Nations currently has or anticipates having coal mining activity.

One concern that was expressed was that the proposed rule would put coal mining on Indian lands at a disadvantage as compared to coal mining on lands where OSM is not the regulatory authority. We understand this concern; however, there are already differences in permitting fees, severance taxes and other taxes that are assessed in the various States and Indian lands where OSM is the regulatory authority. Another concern that was expressed was how the proposed rule would impact Indian lands once the Tribe/Nation assumes either full or partial primacy. If a Tribe/Nation assumes full primacy, it would replace OSM as the regulatory authority and the fees in this proposed rule would no longer be collected by OSM. In that case, the Tribe/Nation would have authority to set its own fees pursuant to sections 507(a) and 710(j)(1)(B). If a Tribe/Nation assumes only partial primacy, OSM would still assess fees for the work it does in lieu of the Tribe/Nation. For example, if a Tribe/Nation decided to assume responsibility for inspection and enforcement but not permit processing, OSM would assess and collect the permit processing fee.

The Crow Tribe's "Ceded Strip" in Montana represents a unique and special situation. The United States Department of the Interior and the State of Montana entered into a Memorandum of Understanding (MOU) on August 12, 1985, "to provide for effective regulation of surface coal mining and reclamation operations . . . on lands on the Crow Ceded Strip in Montana in a manner that achieves the regulatory purposes of the

Surface Mining Control and Reclamation Act of 1977, fosters State-Federal cooperation and eliminates unnecessary burdens, intergovernmental overlap and duplicative regulation.” Under the terms of the MOU, the Department of the Interior and Montana agreed to coordinate the administration of applicable surface mining requirements in the Crow Ceded Strip. Under this proposed rule, permits and applications on lands within the Crow Ceded Strip would be subject to the processing fee and the annual fixed fee for all services OSM provides because these services provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Because, pursuant to the MOU, OSM and Montana share responsibility for the regulation of surface coal mining and reclamation operations on the Crow Ceded Strip, OSM would expect the processing fees it charges to an applicant, operator, or permittee located on the Crow Ceded Strip to address only the costs OSM incurs with regard to its regulatory responsibilities under SMCRA, and not the separate costs that Montana incurs as a result of its responsibilities under SMCRA and the MOU. Therefore, OSM would also expect that its processing fees would be lower than the fees that OSM would charge a comparable operation that is not within those boundaries. Because, consistent with the MOU, OSM would charge only those processing and annual fixed fees attributable to the regulatory functions that OSM actually performs, we do not view the potential assessment of two sets of fees (Montana’s and OSM’s) as unnecessary and duplicative.

## **Executive Order 12630 – Takings**

Under the criteria in Executive Order 12630, this rule does not have significant takings implications; therefore, a takings implication assessment is not required. This determination is based on the fact that the rule will not have an impact on the use or value of private property.

### **Executive Order 13132 - Federalism**

This proposed rule does not have Federalism implications because it only seeks to recover costs incurred by the Federal government for activities within the exclusive jurisdiction of the Federal government—e.g., in States that have not assumed primacy. Thus, it will not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

### **Data Quality Act**

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. No. 106-554).

### **Clarity of these Regulations**

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more but shorter sections (a “section” appears in bold type and is preceded by the symbol “§” and a numbered heading; for example, “§ 736.25 Who is required to pay fees?”)

(5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** part of this preamble helpful in understanding the proposed rule?

(6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Information and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street N.W., Washington, DC 20240. You may also email the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

## **List of Subjects**

### 30 CFR Part 701

Law Enforcement, Surface mining, Underground mining

### 30 CFR Part 736

Intergovernmental relations, Surface mining, Underground mining

30 CFR Part 737

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining

30 CFR Part 738

Intergovernmental relations, Surface mining, Underground mining

30 CFR Part 750

Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining

Dated: March 3, 2013

Tommy P. Beaudreau /s/  
Principal Deputy Assistant Secretary–Land and Minerals Management

For the reasons set forth in the preamble, we propose to amend 30 CFR Chapter VII as follows.

## **PART 701 – PERMANENT REGULATORY PROGRAM**

1. The authority citation for part 701 continues to read as follows:

AUTHORITY: 30 U.S.C. 1201 et seq.

2. In § 701.5, in the definition for the term “violation,” add paragraph (2)(vi) to read as follows:

### **§ 701.5 Definitions.**

\* \* \* \* \*

Violation \* \* \*

(2) \* \* \*

(vi) a bill or demand letter pertaining to a delinquent processing fee or annual fixed fee owed under parts 736 and 750 of this chapter.

\* \* \* \* \*

## **PART 736 – FEDERAL PROGRAM FOR A STATE**

3. The authority citation for part 736 is revised to read as follows:

AUTHORITY: 30 U.S.C. 1201 et seq.

4. Revise § 736.25 to read as follows:

### **§ 736.25 Who is required to pay fees?**

You, the applicant, permittee, or operator of a surface coal mining and reclamation operation on land where OSM is the regulatory authority or has substituted federal enforcement under Part 733 of this Chapter, must pay the fees required by this subchapter if:

(a) You are an applicant for a permit to conduct surface coal mining and reclamation operations, a permit to conduct coal exploration (but excluding a written notice of intention to explore under § 772.11), a permit renewal or revision, a transfer, assignment or sale of rights in an existing permit, or any other action on which OSM may assess fees as specified in 30 CFR Chapter VII, and we receive your application on or after [the effective date of this rule]; or

(b) You are a permittee or operator of a surface coal mining and reclamation operation and we begin to conduct a mid-term review of your operation after [the effective date of this rule]; or

(c) You are a permittee or operator of a surface coal mining and reclamation operation and we are required to inspect your operation.

5. Add §§ 736.26 and 736.27 to read as follows:

**§ 736.26 What fees must I pay if I am an applicant?**

Before we (OSM) begin to process your application for one of the activities listed in § 736.25(a) or (b), you must pay a processing fee as set forth in Part 737 of this subchapter.

**§ 736.27 What fees must I pay if I am a permittee or an operator?**

Beginning on [the effective date of this rule], you must pay

(a) a *processing fee* as set forth in Part 737 of this subchapter when we conduct a mid-term review of your permit; and

(b) an *annual fixed fee* as set forth in Part 738 of this subchapter.

6. Add part 737 to subchapter C to read as follows:

**PART 737 – PROCESSING FEES FOR OPERATIONS ON LAND WHERE OSM IS  
THE REGULATORY AUTHORITY**

Sec.

737.1 What does this part do?

737.10 Information collection.

737.11 What happens after I submit a permit application or a mid-term review is required for my surface coal mining and reclamation operation?

737.12 How much is the processing fee?

737.13 May I pay the processing fee in installments?

737.14 When must I pay the processing fee?

737.15 What method of payment may I use to pay my fees?

737.16 What if the processing fee estimate is more or less than the actual processing costs?

737.17 What happens to the processing fees I have paid if I decide to withdraw my application or other action, or if the application is denied?

737.18 What happens if I am late paying the processing fee?

AUTHORITY: 30 U.S.C. 1201 et seq.

**§ 737.1 What does this part do?**

(a) This part describes the *processing fee*, including how and when to pay this fee.

(b) Except for a bond release application under § 800.40, all applicants for a permit to conduct surface coal mining and reclamation operations or coal exploration operations (but excluding a written notice of intention to explore under § 772.11), a permit renewal or revision, a transfer, assignment or sale of rights in an existing permit, or any other action on which OSM may assess fees as specified in 30 CFR Chapter VII are required to pay the processing fee if we (OSM) receive your application on or after [the effective date of this rule] involving land where we are the regulatory authority or where we have substituted federal enforcement under Part 733 of this Chapter.

(c) All operators and permittees of surface coal mining and reclamation operations are required to pay the processing fee if we are required to conduct a mid-term review of your permit on or after [the effective date of this rule] involving land where we are the regulatory authority or where we have substituted federal enforcement under Part 733 of this Chapter.

#### **§ 737.10 Information collection.**

The collections of information contained in Part 737 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned control number 1029-XXXX. OSM uses the information collected in this Part to re-estimate and collect fees imposed on permit applicants for surface coal mining and reclamation operations and on operators and permittees when OSM is required to perform a mid-term review. Respondents are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control

number.

**§ 737.11 What happens after I submit a permit application or a mid-term review is required for my surface coal mining and reclamation operation?**

After we receive a permit application or other permitting action identified in section 736.25(a) and before we begin processing that application or when a mid-term review of your permit is required, we will provide you with a written initial estimate of the fee and processing time.

**§ 737.12 How much is the processing fee?**

(a) We will determine the amount of the processing fee on a case-by-case basis and provide you with an initial estimate. Our initial estimate of your processing fee will be an estimate of our costs to review and process your application or conduct a mid-term review of your operation and will be based on our costs to review recent, similar applications and actions. The amount of the fee will consist of:

- (1) Our actual direct costs to process the permit application or other action; and
- (2) An applied indirect rate (expressed as a percentage of direct costs) to recover that portion of our indirect costs associated with performing the review.

(b) Your final cost will be the sum of the actual costs that we incurred.

**§ 737.13 May I pay the processing fee in installments?**

Yes. You have the option to either:

- (a) Submit the estimated fee in one lump sum; or

(b) If the processing time of your application or other action is estimated to be more than six months, you may request to pay the estimated fee in installments. The amount of the partial payment will be calculated by dividing the total estimated fee amount by the number of six-month billing periods estimated for our processing.

**§ 737.14 When must I pay the processing fee?**

(a) You must make full payment or the first installment of your payment, if applicable, within 30 days of the date of the initial estimate.

(b) If you are paying the processing fee in installments, we will bill you for the second installment and all future installments within 10 days following the end of each six-month period while we are processing your application or other action. We must receive payment within 30 days of the billing date on your invoice.

(c) You must pay the entire fee before we will issue the final decision document. However, if you are revising your permit to remedy a violation, we may postpone the deadline for your payment of the fee as necessary to avoid causing a delay in your corrective action.

**§ 737.15 What method of payment may I use to pay my fees?**

All fees due must be submitted to us in the form of an electronic funds transfer (EFT) or a certified check, bank draft or money order payable to the Office of Surface Mining. A bank draft is a check, draft or other order for payment of money drawn by an authorized officer of the bank.

**§ 737.16 What if the processing fee estimate is more or less than the actual processing costs?**

(a) If you are paying your processing fee in installments, we will generally re-estimate the fee every 6 months once processing has begun. If our actual costs to process your application or other action are higher or lower than the amount that you paid, we will adjust the amount of a subsequent billing cycle to reflect this difference.

(b) If you paid the full amount of the fee estimate and our actual processing costs are more than the amount paid, OSM will notify you that the costs are expected to be higher and provide you with a revised estimate. If you do not pay the additional fees as required, we may stop processing your application or other action until we receive payment, unless, in our discretion, we decide it is in the public interest to continue to process your application or other action.

(c) If our actual processing costs are less than the processing fee that you have paid, we will refund any fees to you that were not used after issuance of the final decision document. No interest will be paid on refunded fees.

**§ 737.17 What happens to the processing fees I have paid if I decide to withdraw my application or other action, or if the application is denied?**

Except for mid-term reviews, if you decide to withdraw your application or other action, you must notify us in writing, and we will stop processing your application or other action and refund any moneys that you paid in excess of our processing costs to date. No interest will be paid on refunded fees. If we ultimately deny your application,

you will nevertheless still be responsible for the costs that we incurred in reviewing and processing your application.

**§ 737.18 What happens if I am late paying the processing fee?**

(a) Except for mid-term reviews, processing will not normally begin on your application or other action until we receive your required payment; however, if you submit a permit revision application to remedy a violation, depending on the specific circumstances, we may begin to process your permit revision application before we receive your processing fee to avoid causing a delay in your corrective action.

(b) If you are eligible and choose to pay in installments under § 737.13(b) and you are late paying your six-month processing fee, we will suspend further work on your application or other action, except mid-term reviews, until we receive payment.

(c) All late payments will be subject to interest, penalties, and administrative charges as provided in the Debt Collection Act of 1982, as amended, and 31 CFR 901.9. The failure to make a timely payment of this fee constitutes a violation that will be entered into the Applicant/Violator System.

7. Add part 738 to subchapter C to read as follows:

**PART 738 – ANNUAL FIXED FEES FOR OPERATIONS ON LAND WHERE OSM IS  
THE REGULATORY AUTHORITY**

Sec.

738.1      What does this part do?

738.11     How much is the annual fixed fee?

- 738.12 When is the payment for the annual fixed fee due?
- 738.13 What method of payment may I use to pay my fees?
- 738.14 What happens if I am late paying the annual fixed fee?
- 738.15 What happens if my permit achieves a subsequent phase of bond release or becomes inactive after I have paid my annual fixed fee rate for the year?
- 738.16 How will my prorated bill for my existent permit be determined?

AUTHORITY: 30 U.S.C. 1201 et seq.

### **§ 738.1 What does this part do?**

This part informs you, the permittee or operator of a surface coal mining and reclamation operation, of the fee schedule for the annual fixed fee and how and when to pay this fee. It applies to operations on land where we (OSM) are the regulatory authority or where we have substituted federal enforcement under Part 733 of this Chapter.

### **§ 738.11 How much is the annual fixed fee?**

(a) The table in paragraph (b) of this section sets the annual fixed fee rate, which is based on the geographic region; the permit acreage and type of operation; the permit's phase of bond release, if any; and special situations (such as initial program sites and permits that are inactive). The table contains separate rates applicable to surface coal mining and reclamation operations located east and west of the 100<sup>th</sup> meridian west longitude. The table identifies two different types of permitted operations: support facilities and surface/underground mines. Support facilities include preparation

plants, ancillary facilities (such as haul roads), refuse and/or impoundment sites, loading facilities and/or tipples, and stockpiles.

(b) Annual Fixed Fee Table (in dollars):

	Support Facilities	Surface Coal Mines (including Underground Mines)				
		< 100 permitted acres	≥ 100 to < 1,000 permitted acres	≥ 1,000 to < 10,000 permitted acres	≥ 10,000 to < 20,000 permitted acres	≥ 20,000 permitted acres
<b>Areas East of the 100th Meridian West Longitude</b>						
Permit Without Phase II Bond Release	3,100	3,300	dollars 5,900	18,000	na	na
Permit With Phase II Bond Release	1,300	1,400	2,900	13,000	na	na
Permit Inactive	1,300	1,400	2,900	13,000	na	na
Initial Program Operations	na	700	1,450	na	na	na
<b>Areas West of the 100th Meridian West Longitude</b>						
Permit Without Phase II Bond Release	8,600	na	8,300	17,000	26,000	96,000
Permit With Phase II Bond Release	2,800	na	3,300	7,900	13,000	72,000
Permit Inactive	2,800	na	3,300	7,900	13,000	72,000
Initial Program Operations	1,400	2,000	na	3,950	na	na
For initial program operations, the permit fee relates to the site acreage.						
Fees include 21% percent overhead.						
na = no permits available in these categories.						

(c) We will periodically adjust the annual fixed fees to reflect changes in our direct costs and indirect rates. The revised annual fixed fee rates will be published in the Federal Register and will take effect at the start of the next fiscal year when new annual bills are sent.

**§ 738.12 When is payment of the annual fixed fee due?**

We will bill you on an annual basis in advance of administering and enforcing your permit for the next fiscal year. Existing permittees must pay a prorated bill for the period beginning on the effective date of the rule through the end of the current fiscal year (September 30). Similarly, new permits awarded after the effective date of this rule must pay a prorated bill for the period beginning on the date the permit was issued through the end of the current fiscal year (September 30). Thereafter, all annual bills will be sent at the start of each new fiscal year (October 1). We must receive payment for your annual fixed fee within 30 days of the billing date on your invoice.

**§ 738.13 What method of payment may I use to pay my fees?**

All fees due must be submitted to us in the form of an electronic funds transfer (EFT) or a certified check, bank draft or money order payable to Office of Surface Mining. A bank draft is a check, draft or other order for payment of money drawn by an authorized officer of the bank.

**§ 738.14 What happens if I am late paying the annual fixed fee?**

If you are late paying the annual fixed fee, we may take any enforcement action necessary to comply with parts 843, 845, and 846 of this chapter. In addition, late payments will be subject to interest, penalties, and administrative charges as provided in the Debt Collection Act of 1982, as amended, and 31 CFR 901.9. The failure to make a timely payment of this fee constitutes a violation that will be entered into the Applicant/Violator System.

**§ 738.15 What happens if my permit achieves a subsequent phase of bond release or becomes inactive after I have paid my annual fixed fee rate for the year?**

(a) If your permit or operation achieves a subsequent phase of bond release or becomes inactive during the year after you have paid your annual fixed fee, you are eligible for a reduction of your annual fixed fee and you may be eligible for a partial refund of the annual fixed fee.

(b) You are eligible for a partial refund of your annual fixed fees, if:

(1) Your permit completes a phase of bond release within the first 6 months of the billing year; or

(2) Your permit or operation is inactive for 12 or more continuous months.

(c) We will prorate the amount of your refund based on the effective date of the event that makes your permit or operation eligible for the reduced annual fixed fee rate, whichever is later.

(d) Your partial refund will be credited to your next annual bill unless you request a refund check in writing.

**§ 738.16 How will my prorated bill for my existent permit be determined?**

Once this proposed rule becomes effective, we will send you a prorated annual fixed fee bill for the remainder of the billing year. For sites where we are required to annually conduct 4 complete inspections and 8 partial inspections, your prorated bill will be determined by the number of remaining months in the billing year. For sites that

require only two complete annual inspections, their amount will be determined by the timing of our inspections rather than the remaining months in the billing year.

## **PART 750 – REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS**

8. The authority citation for part 750 continues to read as follows:

AUTHORITY: 30 U.S.C. 1201 et seq.

9. Revise § 750.25 to read as follows:

### **§ 750.25 Who is required to pay fees?**

You, the applicant, permittee, or operator of a surface coal mining and reclamation operation on Indian lands for which OSM is the regulatory authority, must pay the fees required by parts 737 and 738 of this chapter if:

(a) You are an applicant for a permit to conduct surface coal mining and reclamation operations, coal exploration (but not a notice of intention to explore), a permit renewal or revision, a transfer, assignment or sale of rights in an existing permit, or any other action on which OSM may assess fees as specified in 30 CFR Chapter VII, and we receive your application on or after [the effective date of this rule]; or

(b) You are a permittee or operator of a surface coal mining and reclamation operation and we begin to conduct a mid-term review of your operation after [the effective date of this rule]; or

(c) You are a permittee or operator of a surface coal mining and reclamation operation and we are required to inspect your operation.

10. Add §§ 750.26 and 750.27 to read as follows:

**§ 750.26 What fees must I pay if I am an applicant?**

Before we (OSM) begin to process your application for one of the activities listed in § 750.25(a), you must pay a processing fee as set forth in Part 737 of this subchapter.

**§ 750.27 What fees must I pay if I am a permittee or an operator?**

Beginning on [the effective date of this rule], you must pay

(a) a *processing fee* as set forth in Part 737 of this chapter when we conduct a mid-term review of your permit; and

(b) an *annual fixed fee* as set forth in Part 738 of this chapter.

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